

NO. 45327-4

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**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

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JAMES D. WATKINS,

Respondent,

v.

STATE OF WASHINGTON DEPARTMENT OF LICENSING,

Appellant.

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**APPELLANT'S OPENING BRIEF**

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## **I. INTRODUCTION**

James Watkins was arrested by a Pierce County Sherriff's deputy for driving under the influence of alcohol (DUI). After the arrest, the deputy transferred Watkins to a Washington State Patrol trooper for processing, including the administration of implied consent warnings. The arresting deputy told the trooper the essential facts of the arrest, including the erratic driving he observed, that he could smell alcohol coming from Watkins, and that Watkins's eyes were watery and bloodshot. After Watkins refused a breath test, the trooper faxed a 16-page DUI Arrest Report packet to the Department of Licensing. On the first page of that document, the trooper certified that there were reasonable grounds to believe Watkins was driving under the influence at the time of arrest. The DUI Arrest Report packet also included an uncertified narrative report from the deputy who made the arrest.

The Department notified Watkins that it would revoke his license based on his refusal to take a breath test. Watkins requested a hearing to contest the revocation. The Department's hearing officer properly found that the Department had jurisdiction to revoke the license because, under former RCW 46.20.308(6), the Department obtained jurisdiction upon receipt of the trooper's certified report. The hearing officer also properly admitted the arresting deputy's uncertified report because former

RCW 46.20.308(8) expressly states that the sworn or certified report and “any other evidence accompanying the report shall be admissible without further evidentiary foundation.” Also, the Department’s relaxed rules of evidence expressly permit hearsay. Since the hearing officer correctly admitted the reports, this Court should reverse the Pierce County Superior Court’s decision to the contrary and reinstate the Department’s order revoking Watkins’s license.

## **II. ASSIGNMENTS OF ERROR**

The Department assigns no error to the decision subject to this Court’s review: the Department’s final order revoking Watkins’s driver’s license. However, the superior court erred in reversing that decision by concluding the Department lacked jurisdiction and improperly relied upon the report of the arresting deputy to establish probable cause for the stop and arrest.

## **III. ISSUES PERTAINING TO ASSIGNMENT OF ERRORS**

1. Considering former RCW 46.20.308(6) states that the Department shall, upon the receipt of a sworn or certified report, revoke the license of someone who refuses to take a breath test, did the Department have jurisdiction to revoke Watkins’s driver’s license when it received the trooper’s certified DUI arrest report?

2. Consistent with the plain language of the implied consent law and the Department's relaxed rules of evidence, did the Department's hearing officer properly admit the arresting officer's uncertified report which accompanied the signed certified report?

#### **IV. STATEMENT OF THE CASE**

On November 22, 2012, Pierce County Sheriff's Deputy Smith observed a vehicle traveling 56 miles per hour on a 35 mile per hour road. Clerk's Papers (CP) at 21 (Finding of Fact (FF) 2), 46. Deputy Smith activated his emergency lights and sirens. *Id.* The vehicle accelerated, continued at a high rate of speed, ran a red light, and eventually came to a stop in a parking lot. *Id.* Upon contact with the driver, Watkins, Deputy Smith smelled an overwhelming odor of alcohol and observed Watkins's eyes were watery and bloodshot. CP at 21 (FF 3), 45–46. Watkins declined to take field sobriety tests, and Deputy Smith subsequently arrested him for eluding and DUI. CP at 21 (FF 3) 46–47. Deputy Smith then transported Watkins to the Fircrest Police Department to be transferred to the Washington State Patrol for DUI processing. CP at 21 (FF 3), 46.

Deputy Smith told Washington State Patrol Trooper Rushton that he arrested Watkins for eluding and DUI. CP at 21 (FF 3) 37–38. He also informed Trooper Rushton that he had detected a strong odor of



intoxicants and that Watkins had refused field sobriety tests. *Id.* Trooper Rushton then read Watkins the implied consent warnings for breath tests. CP at 22 (FF 4), 38. When Trooper Rushton asked Mr. Watkins if he would submit to a breath test, Mr. Watkins answered “no.” CP at 22 (FF 4), 39.

Trooper Rushton faxed a 16-page DUI Arrest Report packet to the Department of Licensing. CP at 32–47. Trooper Rushton signed the first page of the DUI arrest report packet, which is also the cover sheet for the entire packet, under a certification authorized by RCW 9A.72.085. CP at 32. The certification states, “the foregoing and the accompanying reports/copies of documents and the information contained therein are true, correct, and accurate.” *Id.* The first two full paragraphs of the first page state that there were reasonable grounds to believe the person had been driving a motor vehicle while under the influence of intoxicating liquor and that after receipt of the implied consent warnings, the driver refused to take a test. *Id.*

In addition to the first page certification signed by Trooper Rushton, the DUI Arrest Report packet included Trooper Rushton’s narrative case report with a separate certification signed by Trooper Rushton. CP at 37–39. The faxed packet also included a narrative report

detailing the arrest from Deputy Smith. CP at 43–47. Deputy Smith’s report did not include a separate RCW 9A.72.085 certification. CP at 47.

Pursuant to the implied consent statute, former RCW 46.20.308(7)<sup>1</sup>, the Department mailed Watkins a notice of license revocation. CP at 19, 31. Watkins requested a hearing, and Trooper Rushton testified at the hearing. CP at 19, 29. The hearing officer admitted the entire 16 page DUI Arrest Report packet received from Trooper Rushton per former RCW 46.20.308(8) and WAC 308-103-100, 120, and 150. CP at 20. The hearing officer determined the Department had jurisdiction to revoke Watkins’s license based on receipt of the DUI Arrest Report packet signed by a law enforcement officer and certified pursuant to RCW 9A.72.085. CP at 22 (Conclusion of Law 1). She further concluded that there was a legal basis for the stop and reasonable grounds to believe Mr. Watkins was driving under the influence of alcohol. CP at 22-23 (Conclusion of Law 2, 3).

Watkins appealed to the Pierce County Superior Court. CP 1–9. The court reversed the Department’s determination, concluding the Department could not rely on Deputy Smith’s unsworn report to establish

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<sup>1</sup> E2SSB 5912 amended RCW 46.20.308 resulting in the renumbering of several subsections. The amendments took effect on September 28, 2013. Laws of 2013, 2d Spec. Sess., ch. 35, §36. This brief cites to the law in effect at the time Watkins was arrested through the issuance of the hearing officer’s final order. A copy is attached as Appendix A. The amendments have no substantive effect on this case.

jurisdiction or a lawful basis for the stop and arrest. CP at 71. The Department moved this Court for discretionary review of the superior court's order, and Commissioner Schmidt granted discretionary review. CP 72-74; Ruling Granting Review, pg. 9.

## **V. STANDARD OF REVIEW**

The Court of Appeals reviews the Department's decision from the same position as the superior court. *Clement v. Dep't of Licensing*, 109 Wn. App. 371, 373, 35 P.3d 1171 (2001). Watkins challenged the hearing officer's order revoking his license in superior court. CP at 1-9. Therefore, he carries the burden of demonstrating its invalidity in this Court, too.

The implied consent statute, RCW 46.20.308, governs judicial review of the Department's license revocation order. *Dep't of Licensing v. Cannon*, 147 Wn.2d 41, 48, 50 P.3d 627 (2002). If a person's license suspension, revocation or denial is sustained at an administrative hearing, he has the right to appeal that decision to the superior court. Former RCW 46.20.308(9) (2012).

Under former RCW 46.20.308(9):

The review must be limited to a determination of whether the department has committed any errors of law. The superior court shall accept those factual determinations supported by substantial evidence in the record: (a) that were expressly made by the department; or (b) that may

reasonably be inferred from the final order of the department.

Therefore, the Court of Appeals reviews the administrative order to determine whether the Department has committed any errors of law, upholding findings of fact supported by substantial evidence in the record. See Former RCW 46.20.308(9) (2012); *Clement*, 109 Wn. App. at 374.

## **VI. ARGUMENT**

The Department had jurisdiction to revoke Watkins' license based on receipt of the DUI Arrest Report packet that contained a certification from Trooper Rushton. The certified report contained all of the information required by former RCW 46.20.308(6)(e) necessary to confer jurisdiction on the Department.. It is sufficient to establish jurisdiction because it is the report's existence, not its contents, that establishes jurisdiction. *Broom v. Dep't of Licensing*, 72 Wn. App. 498, 503, 865 P.2d 28 (1994). There is no statutory requirement that the officer certifying the report be present at the arrest.

When a hearing was requested by Watkins, the hearing officer properly admitted the entire DUI Arrest Report packet, including the arresting deputy's uncertified report. Former RCW 46.20.308(8) provides that the sworn or certified report and "any other evidence accompanying the report shall be admissible without further evidentiary foundation . . . ."

Under the plain language of that provision, the 15 pages accompanying the sworn report were admissible without further foundation. The narrative report of the arresting deputy was also admissible under the Department's relaxed rules of evidence permitting hearsay.

The Court should reverse the superior court and reinstate the Department's order of revocation.

**A. The Existence of the DUI Arrest Report, Certified by the Law Enforcement Officer Who Administered the Implied Consent Warnings, Established the Department's Jurisdiction to Revoke Watkins's Driver's License**

Under Washington's implied consent statute, RCW 46.20.308, a driver in Washington is deemed to have consented to a test to determine the alcohol content of his or her breath if arrested by an officer having reasonable grounds to believe the person has been driving under the influence. RCW 46.20.308(1); *Cannon*, 147 Wn.2d at 47. The Department suspends or revokes the license of anyone who, after arrest and receipt of statutory warnings, refuses to take the test or provides two breath test samples over the legal limit during a properly administered test. Former RCW 46.20.308(7) (2012).

If a person refuses the breath test, the "arresting officer or other law enforcement officer at whose direction any test has been given" must transmit a sworn or certified report to the Department stating that 1) the

officer had reasonable grounds to believe that the arrested person had been driving under the influence of alcohol, and 2) the driver refused to take a test after administration of implied consent warnings. Former RCW 46.20.308(6)(e)(i) (2012), (ii) (2012); *Metcalf v. Dep't of Motor Vehicles*, 11 Wn. App. 819, 821, 525 P.2d 819, 821 (1974). Upon receipt of the report, the Department *shall* revoke the license of the person who refused the test. Former RCW 46.20.308(6) (2012). The sworn or certified report is a jurisdictional prerequisite to the Department's authority to revoke. *Alforde v. Dep't of Licensing*, 115 Wn. App. 576, 580, 63 P.3d 170 (2003). The proposed revocation becomes final if the driver does not request a hearing. *Id.* While the report must satisfy the elements listed in RCW 46.20.308, technical deviations or defects are immaterial and do not defeat jurisdiction. *Broom*, 72 Wn. App. at 506.

In *Broom*, the court considered summary language in a sworn report that did not exactly track the language of former RCW 46.20.308(6) (2012). *Id.* at 502. Significantly, the court held that it was the existence of a certified report, not its contents, that conferred jurisdiction on the Department. *Id.* at 503. The use of summary language in a report is adequate, so long as it sets forth the information required by former RCW 46.20.308(6) (2012). *Id.*

There is no statutory requirement that the officer submitting the report have personal knowledge of the facts of the arrest. In practice, a law enforcement officer who administers a test may not have firsthand knowledge of the arrest and vice-versa. However, facts about the arrest *and* the test or refusal to submit to the test must be recited in the jurisdictional sworn report. Former RCW 46.20.308(6)(e)(i) (2012), (ii) (2012). Accordingly, the statutory scheme permits consideration of some facts that are not based on an officer's first-hand knowledge. Here, the fact that the Department received a certified report with summary language tracking former RCW 46.20.308(6)(e) by itself confers jurisdiction. The superior court erred in concluding otherwise.

While it is the existence of the report that was significant for the purposes of jurisdiction, a closer examination of the *contents* of Trooper Rushton's detailed narrative show that the trooper elicited key facts regarding the arrest from the arresting officer which justified the trooper's summary certification. CP at 37–38. Accordingly, there is nothing about the trooper's summary certification that unsettles the presumption of credibility that the Department was required to give the report. *See Metcalf*, 11 Wn. App. at 821 (officer's certified report carries a presumption of credibility which governs the revocation order if a hearing is not requested).

Beside there being no statutory requirement that Trooper Rushton have personal knowledge of the arrest, in similar contexts, a law enforcement officer can certify facts to a judicial officer even though the officer lacks personal knowledge. In *State v. Patterson*, the Court of Appeals decided that a law enforcement officer may provide a certified statement to a judicial officer in an application for a warrant even though the statement relays hearsay information from a fellow officer. *State v. Patterson*, 37 Wn. App. 275, 277, 679 P.2d 416, 419 (1984). The court approved of this practice so long as the judicial officer has information regarding the underlying circumstances on which the certifying officer based his conclusions. *Id.* Here, the non-arresting trooper appropriately submitted a certified summary report to the Department regarding his belief that there were reasonable grounds to believe Watkins was DUI. He provided information supporting his conclusion through the recitation in his own report regarding the facts of the stop and arrest relayed to him by the arresting officer. The trooper also supported his conclusion by attaching the report received from the arresting officer.

The first page of the DUI Arrest Report packet recited verbatim the language required by former RCW 46.20.308(6)(e) (2012). CP at 32. It is the existence of this first page that establishes the Department's jurisdiction. While Trooper Rushton may not have personally arrested



Watkins, his summary report is still presumptively credible especially since he knew of the facts related to Watkins' arrest. Accordingly, the Department properly concluded that it had jurisdiction to initiate a license revocation.

**B. The Plain Language of Former RCW 46.20.308(8) Permits Admission of the Arresting Deputy's Narrative Report Because it Accompanied Trooper Ruston's Certified Report**

After jurisdiction is established, the driver has an opportunity to contest the revocation by requesting a hearing with the Department. Former RCW 46.20.308(8) (2012); *Metcalf*, 11 Wn. App. at 821. The issues at the administrative hearing are limited to: 1) whether there were reasonable grounds to believe the driver was driving under the influence, 2) whether the person was placed under arrest, and 3) whether the driver refused the breath test. Former RCW 46.20.308(8) (2012).

Former RCW 46.20.308(8) provides that the sworn or certified report and "any other evidence accompanying the report shall be admissible without further evidentiary foundation and the certifications authorized by the criminal rules for courts of limited jurisdiction shall be admissible without further evidentiary foundation."

The plain meaning of a statute "is to be discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme

as a whole.” *Lake v. Woodcreek Homeowners Ass’n*, 169 Wn.2d 516, 526, 229 P.3d 791, 243 P.3d 1283 (2010) (internal quotation marks omitted). A court’s fundamental objective is to ascertain and carry out the legislature’s intent. *Id.*

Taken together, the provisions of RCW 46.20.308 are intended to expedite the implied consent hearing process by establishing a method of proof that primarily relies on written materials received from law enforcement. Besides the sworn report, former RCW 46.20.308(8) provides that two kinds of additional written information should be admitted at hearing without further foundation: evidence accompanying the sworn report and certifications authorized by courts of limited jurisdiction. Relevant here, the first source – evidence accompanying the report – is broad and plainly applies to additional written information from law enforcement agencies. This additional source of information is necessary at a hearing, especially given that former RCW 46.20.308(6)(e) only requires a factually non-specific certification regarding the circumstances of the arrest.

Although the officer’s summary report under form RCW 46.20.308(6)(e) must be sworn or certified, the report may attach other documents from law enforcement that need not necessarily be sworn or certified. Deputy Smith’s narrative report detailing the stop and arrest

physically accompanied the certified report and is proof that there were reasonable grounds to believe that Watkins was DUI. Under the plain language of the statute, the report was admissible “without further evidentiary foundation.” The hearing officer properly admitted and considered the report. The Department’s revocation order should therefore be reinstated.

**C. Hearsay Evidence is Admissible Under the Department’s Relaxed Rules of Evidence Approved by the Supreme Court in *Ingram v. Department of Licensing***

In addition to the admissibility standards provided in former RCW 46.20.308(8), the hearing officer has the authority, under the Department’s rules, to admit hearsay evidence so long as it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. WAC 308-103-120(1). This standard is identical to analogous language contained in the Administrative Procedure Act.<sup>2</sup> RCW 34.05.452(1).

In *Ingram v. Dep’t of Licensing*, the Supreme Court considered whether a hearing officer had authority to admit relevant evidence without further foundation under the Department’s relaxed rules of evidence. *Ingram v. Dep’t of Licensing*, 162 Wn.2d 514, 517, 173 P.3d 259 (2007). Ingram argued that a declaration from the state toxicologist regarding the

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<sup>2</sup> Most agency hearings take place under the Administrative Procedure Act, but the Department’s driver license hearings do not. RCW 34.05.030(2)(b).

temperature of a simulator solution was not admissible. *Id.* at 520. The declaration was available directly from the Toxicologist’s website. *Id.* at 519. The Court reviewed the Department’s rules and held that court rules requiring foundation and excluding hearsay did not apply to administrative proceedings.<sup>3</sup> *Id.* at 524. The Court noted that “much of the evidence that the legislature has declared may be considered by the hearing officer during the implied consent hearings is, by its nature, hearsay evidence.” *Id.* at 525. The Court decided that the hearing officer had authority to admit the toxicologist’s declaration based on the Department’s rules alone. *Id.* at 526. Given the breadth of these rules, the Court decided that it need not reach the issue of whether specific statutory provisions – specifically the provision in RCW 46.20.308(8) allowing CrRLJ 6.13 certifications – supported admissibility. *Id.* The Court also noted its traditional reluctance to read into rules restrictions that are not there. *Id.*

Here, the narrative report of the arresting deputy is admissible hearsay under the Department’s relaxed rules of evidence. Under *Ingram*, a reviewing court need not reach the issue of specific statutory provision regarding admissibility because of the broad swath of information permitted under the Department’s evidence rules. *See also Alforde v.*

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<sup>3</sup> At the time *Ingram* was decided the Department did not have a rule explicitly allowing for admission of hearsay but did have a general rule which authorized the hearing officer to receive relevant evidence. Former WAC 308-103-150(5) (2002). The Department’s current rule explicitly authorizing hearsay evidence was adopted in 2006.

*Dep't of Licensing*, 115 Wn. App. 576, 63 P.3d 170 (2003) (failure to sign a coversheet declaration attached to officer's reports did not warrant reversal of driver's license suspension).

Furthermore, Trooper Rushton's report recites essential facts about the arrest that Deputy Smith relayed to Trooper Rushton. CP at 36–37. While those statements in Trooper Rushton's report are hearsay, they are equally admissible under the Department's rules. Thus, even Trooper Rushton's report standing alone is sufficient to support the Department's *prima facie* case.

Under a California statute similar to Washington's, the California Supreme Court approved of the use of unsworn police reports to support an administrative license suspension. *Lake v. Reed*, 16 Cal. 4th 448, 940 P.2d 311, 313 (1997). In *Lake*, two officers reported to the scene of an automobile collision. *Id.* Upon investigation, the arresting officer determined that Lake exhibited indicia of intoxication. *Id.* Based on witness statements alone, the arresting officer determined that Lake had been driving. *Id.* The non-arresting officer elicited an admission of driving directly from Lake. *Id.* The arresting officer submitted a sworn report to the California Department of Motor Vehicles (DMV) that included the unsworn witness hearsay statements. *Id.* The non-arresting

office submitted a separate unsworn report that included the driver's admission. *Id.*

Under the California statute, an officer is required to serve a notice of suspension on a driver arrested for DUI who is determined to have a prohibited blood-alcohol level. *Id.* at 315. The arresting officer is required to submit a sworn report "of all information relevant to the enforcement action" to the DMV. *Id.* The DMV is then required to automatically review the suspension and consider "the sworn report submitted by the peace officer . . . and any other evidence accompanying the report." *Id.* at 316. Before an automatic DMV review occurs, a person may request a hearing before a hearing officer on limited issues, including whether the arresting officer had reasonable cause to believe the person was driving under the influence. *Id.* at 315. At a hearing, the DMV may receive sworn evidence and other evidence admissible under the relaxed rules of evidence prescribed by the California's Administrative Procedure Act.<sup>4</sup> *Id.* at 317.

In upholding the suspension of Lake's license, the California Supreme Court implicitly concluded that the unsworn non-arresting officer's report was "other evidence accompanying the report" for the

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<sup>4</sup> The California Administrative Procedure Act differs from Washington law in that hearsay is admissible under California's Act to supplement other evidence but cannot itself support a finding of fact unless it would be admissible over objection in civil actions.

purpose of the automatic review. *Id.* at 316. The court noted that the “statutory scheme contemplates that the DMV will consider evidence other than the [sworn report] filed by the arresting officer.” *Id.* at 318.

The California Supreme Court again addressed the phrase “any other evidence accompanying a report” in a subsequent decision. In *McDonald v. Gutierrez*, the arresting officer submitted a cursory sworn report regarding the facts of a DUI stop. *MacDonald v. Gutierrez*, 32 Cal. 4th 150, 81 P.3d 975, 977 (2004). The officer also completed a supplemental detailed narrative of the circumstances of the stop that was unsworn. *Id.* The court balanced the requirement that the arresting officer submit a “sworn report of all information relevant to the enforcement action” with the code provision that permitted the DMV to consider “any other evidence accompanying the report.” *Id.* at 980.

In striking a balance, the court noted that the purpose of the law was to provide an efficient mechanism to remove dangerous drivers from the road. *Id.* at 980. The court decided that “so long as the sworn report is filed, it is consistent with the relaxed evidentiary standards of an administrative per se hearing that technical omissions of proof can be corrected by an unsworn report filed by the arresting officer.” *Id.*

These California decisions are consistent with *Ingram*, the plain language of RCW 46.20.308, and the Department’s rules. While a sworn

report is required to establish jurisdiction, the Department's case at a hearing rests on the certified report and "any other evidence accompanying the report," whether certified or not. This result best accomplishes the legislature's objective of swiftly and efficiently removing drunk drivers from the roads and protecting members of the traveling public. Accordingly, the Department's hearing officer appropriately admitted and relied on Deputy Smith's report.

On a final note, if Watkins disputed what Deputy Smith stated in his report, he had an absolute right to subpoena and cross-examine him at the hearing. See *Lytle v. Dep't of Licensing*, 94 Wn. App. 357, 362, 971 P.2d 969 (1999). Watkins chose not to subpoena the Deputy. Even if a certification were required, the absence of one is a technical omission not warranting reversal.

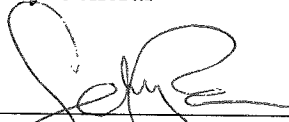


## VII. CONCLUSION

Based on the foregoing, the Department respectfully requests that the Court reverse the decision of the superior court, thereby affirming and reinstating the hearing officer's revocation order.

RESPECTFULLY SUBMITTED this 23<sup>RD</sup> day of April, 2014.

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### PROOF OF SERVICE

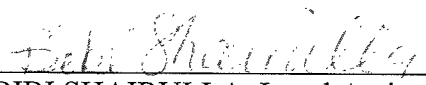
I, Bibi Shairulla, certify that I caused a copy of this document – **Appellant's Opening Brief with Appendix A**– to be served on all parties or their counsel of record on the date below by Electronic Mail and US Mail Postage Prepaid via Consolidated Mail Service as indicated:

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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 23<sup>rd</sup> day of April, 2014, at Olympia, WA.

  
BIBI SHAIRULLA, Legal Assistant

# APPENDIX A

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SECOND SUBSTITUTE SENATE BILL 5912**

Chapter 35, Laws of 2013

63rd Legislature  
2013 2nd Special Session

CRIMES--DRIVING UNDER THE INFLUENCE

EFFECTIVE DATE: 09/28/13 - Except for sections 27, 28, and 30  
through 32, which become effective 01/01/14.

Passed by the Senate June 26, 2013  
YEAS 46 NAYS 0

BRAD OWEN

\_\_\_\_\_  
**President of the Senate**

Passed by the House June 27, 2013  
YEAS 92 NAYS 0

FRANK CHOPP

\_\_\_\_\_  
**Speaker of the House of Representatives**

CERTIFICATE

I, Hunter G. Goodman, Secretary of  
the Senate of the State of  
Washington, do hereby certify that  
the attached is **ENGROSSED SECOND  
SUBSTITUTE SENATE BILL 5912** as  
passed by the Senate and the House  
of Representatives on the dates  
hereon set forth.

HUNTER G. GOODMAN

\_\_\_\_\_  
**Secretary**

Approved July 18, 2013, 10:27 a.m.

FILED

July 18, 2013

JAY INSLEE

\_\_\_\_\_  
**Governor of the State of Washington**

**Secretary of State  
State of Washington**

1        NEW SECTION.    **Sec. 34.**    (1) Any funding provided during the 2013-  
2    2015 biennium for the ignition interlock program at the Washington  
3    state patrol that is in addition to any funding identified in chapter  
4    306, Laws of 2013 (omnibus transportation appropriations act) may only  
5    be used to provide field officers to work directly with manufacturers,  
6    service centers, technicians, and participants in the program. This  
7    may include up to one full-time equivalent noncommissioned staff to  
8    provide administrative support for the program. Any funding provided  
9    as identified in this section must be used to supplement and not  
10   supplant other funds being used to fund the ignition interlock program.  
11        (2) This section expires July 1, 2015.

12        NEW SECTION.    **Sec. 35.**    A new section is added to chapter 43.43 RCW  
13   to read as follows:

14        (1) Any officer conducting field inspections of ignition interlock  
15   devices under the ignition interlock program shall report violations by  
16   program participants to the court.

17        (2) The Washington state patrol may not be held liable for any  
18   damages resulting from any act or omission in conducting activities  
19   under the ignition interlock program, other than acts or omissions  
20   constituting gross negligence or willful or wanton misconduct.

21        **Sec. 36.**    RCW 46.20.308 and 2013 c 3 s 31 (Initiative Measure No.  
22   502), 2012 c 183 s 7, and 2012 c 80 s 12 are each reenacted and amended  
23   to read as follows:

24        (1) Any person who operates a motor vehicle within this state is  
25   deemed to have given consent, subject to the provisions of RCW  
26   46.61.506, to a test or tests of his or her breath (~~(or blood)~~) for the  
27   purpose of determining the alcohol concentration, THC concentration, or  
28   presence of any drug in his or her breath (~~(or blood)~~) if arrested for  
29   any offense where, at the time of the arrest, the arresting officer has  
30   reasonable grounds to believe the person had been driving or was in  
31   actual physical control of a motor vehicle while under the influence of  
32   intoxicating liquor or any drug or was in violation of RCW 46.61.503.  
33   Neither consent nor this section precludes a police officer from  
34   obtaining a search warrant for a person's breath or blood.

35        (2) The test or tests of breath shall be administered at the  
36   direction of a law enforcement officer having reasonable grounds to

1 believe the person to have been driving or in actual physical control  
2 of a motor vehicle within this state while under the influence of  
3 intoxicating liquor or any drug or the person to have been driving or  
4 in actual physical control of a motor vehicle while having alcohol or  
5 THC in a concentration in violation of RCW 46.61.503 in his or her  
6 system and being under the age of twenty-one. (~~However, in those~~  
7 ~~instances where the person is incapable due to physical injury,~~  
8 ~~physical incapacity, or other physical limitation, of providing a~~  
9 ~~breath sample or where the person is being treated in a hospital,~~  
10 ~~clinic, doctor's office, emergency medical vehicle, ambulance, or other~~  
11 ~~similar facility or where the officer has reasonable grounds to believe~~  
12 ~~that the person is under the influence of a drug, a blood test shall be~~  
13 ~~administered by a qualified person as provided in RCW 46.61.506(5).)~~)  
14 The officer shall inform the person of his or her right to refuse the  
15 breath (~~or blood~~) test, and of his or her right to have additional  
16 tests administered by any qualified person of his or her choosing as  
17 provided in RCW 46.61.506. The officer shall warn the driver, in  
18 substantially the following language, that:

19 (a) If the driver refuses to take the test, the driver's license,  
20 permit, or privilege to drive will be revoked or denied for at least  
21 one year; and

22 (b) If the driver refuses to take the test, the driver's refusal to  
23 take the test may be used in a criminal trial; and

24 (c) If the driver submits to the test and the test is administered,  
25 the driver's license, permit, or privilege to drive will be suspended,  
26 revoked, or denied for at least ninety days if:

27 (i) The driver is age twenty-one or over and the test indicates  
28 either that the alcohol concentration of the driver's breath (~~or~~  
29 ~~blood~~) is 0.08 or more or that the THC concentration of the driver's  
30 blood is 5.00 or more; or

31 (ii) The driver is under age twenty-one and the test indicates  
32 either that the alcohol concentration of the driver's breath (~~or~~  
33 ~~blood~~) is 0.02 or more or that the THC concentration of the driver's  
34 blood is above 0.00; or

35 (iii) The driver is under age twenty-one and the driver is in  
36 violation of RCW 46.61.502 or 46.61.504; and

37 (d) If the driver's license, permit, or privilege to drive is

1 suspended, revoked, or denied the driver may be eligible to immediately  
2 apply for an ignition interlock driver's license.

3 (3) Except as provided in this section, the test administered shall  
4 be of the breath only. If an individual is unconscious or is under  
5 arrest for the crime of felony driving under the influence of  
6 intoxicating liquor or drugs under RCW 46.61.502(6), felony physical  
7 control of a motor vehicle while under the influence of intoxicating  
8 liquor or any drug under RCW 46.61.504(6), vehicular homicide as  
9 provided in RCW 46.61.520, or vehicular assault as provided in RCW  
10 46.61.522, or if an individual is under arrest for the crime of driving  
11 while under the influence of intoxicating liquor or drugs as provided  
12 in RCW 46.61.502, which arrest results from an accident in which there  
13 has been serious bodily injury to another person, a breath or blood  
14 test may be administered without the consent of the individual so  
15 arrested pursuant to a search warrant, a valid waiver of the warrant  
16 requirement, or when exigent circumstances exist.

17 ~~((Any person who is dead, unconscious, or who is otherwise in~~  
18 ~~a condition rendering him or her incapable of refusal, shall be deemed~~  
19 ~~not to have withdrawn the consent provided by subsection (1) of this~~  
20 ~~section and the test or tests may be administered, subject to the~~  
21 ~~provisions of RCW 46.61.506, and the person shall be deemed to have~~  
22 ~~received the warnings required under subsection (2) of this section.~~

23 ~~(5))~~ If, following his or her arrest and receipt of warnings under  
24 subsection (2) of this section, the person arrested refuses upon the  
25 request of a law enforcement officer to submit to a test or tests of  
26 his or her breath ~~((or blood))~~, no test shall be given except as  
27 authorized ~~((under subsection (3) or (4) of this section))~~ by a search  
28 warrant.

29 ~~((6))~~ (5) If, after arrest and after the other applicable  
30 conditions and requirements of this section have been satisfied, a test  
31 or tests of the person's blood or breath is administered and the test  
32 results indicate that the alcohol concentration of the person's breath  
33 or blood is 0.08 or more, or the THC concentration of the person's  
34 blood is 5.00 or more, if the person is age twenty-one or over, or that  
35 the alcohol concentration of the person's breath or blood is 0.02 or  
36 more, or the THC concentration of the person's blood is above 0.00, if  
37 the person is under the age of twenty-one, or the person refuses to  
38 submit to a test, the arresting officer or other law enforcement

1 officer at whose direction any test has been given, or the department,  
2 where applicable, if the arrest results in a test of the person's  
3 blood, shall:

4 (a) Serve notice in writing on the person on behalf of the  
5 department of its intention to suspend, revoke, or deny the person's  
6 license, permit, or privilege to drive as required by subsection  
7 ~~((+7))~~ (6) of this section;

8 (b) Serve notice in writing on the person on behalf of the  
9 department of his or her right to a hearing, specifying the steps he or  
10 she must take to obtain a hearing as provided by subsection ~~((+8))~~ (7)  
11 of this section and that the person waives the right to a hearing if he  
12 or she receives an ignition interlock driver's license;

13 (c) ~~((Mark the person's Washington state driver's license or permit  
14 to drive, if any, in a manner authorized by the department;~~

15 ~~(+d))~~ Serve notice in writing that the ~~((marked))~~ license or  
16 permit, if any, is a temporary license that is valid for sixty days  
17 from the date of arrest or from the date notice has been given in the  
18 event notice is given by the department following a blood test, or  
19 until the suspension, revocation, or denial of the person's license,  
20 permit, or privilege to drive is sustained at a hearing pursuant to  
21 subsection ~~((+8))~~ (7) of this section, whichever occurs first. No  
22 temporary license is valid to any greater degree than the license or  
23 permit that it replaces; and

24 ~~((+e))~~ (d) Immediately notify the department of the arrest and  
25 transmit to the department within seventy-two hours, except as delayed  
26 as the result of a blood test, a sworn report or report under a  
27 declaration authorized by RCW 9A.72.085 that states:

28 (i) That the officer had reasonable grounds to believe the arrested  
29 person had been driving or was in actual physical control of a motor  
30 vehicle within this state while under the influence of intoxicating  
31 liquor or drugs, or both, or was under the age of twenty-one years and  
32 had been driving or was in actual physical control of a motor vehicle  
33 while having an alcohol or THC concentration in violation of RCW  
34 46.61.503;

35 (ii) That after receipt of the warnings required by subsection (2)  
36 of this section the person refused to submit to a test of his or her  
37 ~~((blood- or))~~ breath, or a test was administered and the results  
38 indicated that the alcohol concentration of the person's breath or



1 blood was 0.08 or more, or the THC concentration of the person's blood  
2 was 5.00 or more, if the person is age twenty-one or over, or that the  
3 alcohol concentration of the person's breath or blood was 0.02 or more,  
4 or the THC concentration of the person's blood was above 0.00, if the  
5 person is under the age of twenty-one; and

6 (iii) Any other information that the director may require by rule.

7 (~~((+7+))~~) (6) The department of licensing, upon the receipt of a  
8 sworn report or report under a declaration authorized by RCW 9A.72.085  
9 under subsection (~~((+6+)(e+))~~) (5)(d) of this section, shall suspend,  
10 revoke, or deny the person's license, permit, or privilege to drive or  
11 any nonresident operating privilege, as provided in RCW 46.20.3101,  
12 such suspension, revocation, or denial to be effective beginning sixty  
13 days from the date of arrest or from the date notice has been given in  
14 the event notice is given by the department following a blood test, or  
15 when sustained at a hearing pursuant to subsection (~~((+8+))~~) (7) of this  
16 section, whichever occurs first.

17 (~~((+9+))~~) (7) A person receiving notification under subsection  
18 (~~((+6+))~~) (5)(b) of this section may, within twenty days after the notice  
19 has been given, request in writing a formal hearing before the  
20 department. The person shall pay a fee of three hundred seventy-five  
21 dollars as part of the request. If the request is mailed, it must be  
22 postmarked within twenty days after receipt of the notification. Upon  
23 timely receipt of such a request for a formal hearing, including  
24 receipt of the required three hundred seventy-five dollar fee, the  
25 department shall afford the person an opportunity for a hearing. The  
26 department may waive the required three hundred seventy-five dollar fee  
27 if the person is an indigent as defined in RCW 10.101.010. Except as  
28 otherwise provided in this section, the hearing is subject to and shall  
29 be scheduled and conducted in accordance with RCW 46.20.329 and  
30 46.20.332. The hearing shall be conducted in the county of the arrest,  
31 except that all or part of the hearing may, at the discretion of the  
32 department, be conducted by telephone or other electronic means. The  
33 hearing shall be held within sixty days following the arrest or  
34 following the date notice has been given in the event notice is given  
35 by the department following a blood test, unless otherwise agreed to by  
36 the department and the person, in which case the action by the  
37 department shall be stayed, and any valid temporary license marked  
38 under subsection (~~((+6+)(e+))~~) (5) of this section extended, if the person

1 is otherwise eligible for licensing. For the purposes of this section,  
2 the scope of the hearing shall cover the issues of whether a law  
3 enforcement officer had reasonable grounds to believe the person had  
4 been driving or was in actual physical control of a motor vehicle  
5 within this state while under the influence of intoxicating liquor or  
6 any drug or had been driving or was in actual physical control of a  
7 motor vehicle within this state while having alcohol in his or her  
8 system in a concentration of 0.02 or more, or THC in his or her system  
9 in a concentration above 0.00, if the person was under the age of  
10 twenty-one, whether the person was placed under arrest, and (a) whether  
11 the person refused to submit to the test or tests upon request of the  
12 officer after having been informed that such refusal would result in  
13 the revocation of the person's license, permit, or privilege to drive,  
14 or (b) if a test or tests were administered, whether the applicable  
15 requirements of this section were satisfied before the administration  
16 of the test or tests, whether the person submitted to the test or  
17 tests, or whether a test was administered without express consent as  
18 permitted under this section, and whether the test or tests indicated  
19 that the alcohol concentration of the person's breath or blood was 0.08  
20 or more, or the THC concentration of the person's blood was 5.00 or  
21 more, if the person was age twenty-one or over at the time of the  
22 arrest, or that the alcohol concentration of the person's breath or  
23 blood was 0.02 or more, or the THC concentration of the person's blood  
24 was above 0.00, if the person was under the age of twenty-one at the  
25 time of the arrest. The sworn report or report under a declaration  
26 authorized by RCW 9A.72.085 submitted by a law enforcement officer is  
27 prima facie evidence that the officer had reasonable grounds to believe  
28 the person had been driving or was in actual physical control of a  
29 motor vehicle within this state while under the influence of  
30 intoxicating liquor or drugs, or both, or the person had been driving  
31 or was in actual physical control of a motor vehicle within this state  
32 while having alcohol in his or her system in a concentration of 0.02 or  
33 more, or THC in his or her system in a concentration above 0.00, and  
34 was under the age of twenty-one and that the officer complied with the  
35 requirements of this section.

36 A hearing officer shall conduct the hearing, may issue subpoenas  
37 for the attendance of witnesses and the production of documents, and  
38 shall administer oaths to witnesses. The hearing officer shall not

1 issue a subpoena for the attendance of a witness at the request of the  
2 person unless the request is accompanied by the fee required by RCW  
3 5.56.010 for a witness in district court. The sworn report or report  
4 under a declaration authorized by RCW 9A.72.085 of the law enforcement  
5 officer and any other evidence accompanying the report shall be  
6 admissible without further evidentiary foundation and the  
7 certifications authorized by the criminal rules for courts of limited  
8 jurisdiction shall be admissible without further evidentiary  
9 foundation. The person may be represented by counsel, may question  
10 witnesses, may present evidence, and may testify. The department shall  
11 order that the suspension, revocation, or denial either be rescinded or  
12 sustained.

13 ((+9+)) (8) If the suspension, revocation, or denial is sustained  
14 after such a hearing, the person whose license, privilege, or permit is  
15 suspended, revoked, or denied has the right to file a petition in the  
16 superior court of the county of arrest to review the final order of  
17 revocation by the department in the same manner as an appeal from a  
18 decision of a court of limited jurisdiction. Notice of appeal must be  
19 filed within thirty days after the date the final order is served or  
20 the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ  
21 1.1, or other statutes or rules referencing de novo review, the appeal  
22 shall be limited to a review of the record of the administrative  
23 hearing. The appellant must pay the costs associated with obtaining  
24 the record of the hearing before the hearing officer. The filing of  
25 the appeal does not stay the effective date of the suspension,  
26 revocation, or denial. A petition filed under this subsection must  
27 include the petitioner's grounds for requesting review. Upon granting  
28 petitioner's request for review, the court shall review the  
29 department's final order of suspension, revocation, or denial as  
30 expeditiously as possible. The review must be limited to a  
31 determination of whether the department has committed any errors of  
32 law. The superior court shall accept those factual determinations  
33 supported by substantial evidence in the record: (a) That were  
34 expressly made by the department; or (b) that may reasonably be  
35 inferred from the final order of the department. The superior court  
36 may reverse, affirm, or modify the decision of the department or remand  
37 the case back to the department for further proceedings. The decision  
38 of the superior court must be in writing and filed in the clerk's

1 office with the other papers in the case. The court shall state the  
2 reasons for the decision. If judicial relief is sought for a stay or  
3 other temporary remedy from the department's action, the court shall  
4 not grant such relief unless the court finds that the appellant is  
5 likely to prevail in the appeal and that without a stay the appellant  
6 will suffer irreparable injury. If the court stays the suspension,  
7 revocation, or denial it may impose conditions on such stay.

8 ((+10+)) (9)(a) If a person whose driver's license, permit, or  
9 privilege to drive has been or will be suspended, revoked, or denied  
10 under subsection ((+7+)) (6) of this section, other than as a result of  
11 a breath ((~~or-blood~~)) test refusal, and who has not committed an  
12 offense for which he or she was granted a deferred prosecution under  
13 chapter 10.05 RCW, petitions a court for a deferred prosecution on  
14 criminal charges arising out of the arrest for which action has been or  
15 will be taken under subsection ((+7+)) (6) of this section, or notifies  
16 the department of licensing of the intent to seek such a deferred  
17 prosecution, then the license suspension or revocation shall be stayed  
18 pending entry of the deferred prosecution. The stay shall not be  
19 longer than one hundred fifty days after the date charges are filed, or  
20 two years after the date of the arrest, whichever time period is  
21 shorter. If the court stays the suspension, revocation, or denial, it  
22 may impose conditions on such stay. If the person is otherwise  
23 eligible for licensing, the department shall issue a temporary license,  
24 or extend any valid temporary license ((~~marked~~)) under subsection  
25 ((+6+)) (5) of this section, for the period of the stay. If a deferred  
26 prosecution treatment plan is not recommended in the report made under  
27 RCW 10.05.050, or if treatment is rejected by the court, or if the  
28 person declines to accept an offered treatment plan, or if the person  
29 violates any condition imposed by the court, then the court shall  
30 immediately direct the department to cancel the stay and any temporary  
31 marked license or extension of a temporary license issued under this  
32 subsection.

33 (b) A suspension, revocation, or denial imposed under this section,  
34 other than as a result of a breath ((~~or-blood~~)) test refusal, shall be  
35 stayed if the person is accepted for deferred prosecution as provided  
36 in chapter 10.05 RCW for the incident upon which the suspension,  
37 revocation, or denial is based. If the deferred prosecution is

1 terminated, the stay shall be lifted and the suspension, revocation, or  
2 denial reinstated. If the deferred prosecution is completed, the stay  
3 shall be lifted and the suspension, revocation, or denial canceled.

4 (c) The provisions of (b) of this subsection relating to a stay of  
5 a suspension, revocation, or denial and the cancellation of any  
6 suspension, revocation, or denial do not apply to the suspension,  
7 revocation, denial, or disqualification of a person's commercial  
8 driver's license or privilege to operate a commercial motor vehicle.

9 ~~((+11+))~~ (10) When it has been finally determined under the  
10 procedures of this section that a nonresident's privilege to operate a  
11 motor vehicle in this state has been suspended, revoked, or denied, the  
12 department shall give information in writing of the action taken to the  
13 motor vehicle administrator of the state of the person's residence and  
14 of any state in which he or she has a license.

15 **Sec. 37.** RCW 9.94A.535 and 2013 c 256 s 2 and 2013 c 84 s 26 are  
16 each reenacted and amended to read as follows:

17 The court may impose a sentence outside the standard sentence range  
18 for an offense if it finds, considering the purpose of this chapter,  
19 that there are substantial and compelling reasons justifying an  
20 exceptional sentence. Facts supporting aggravated sentences, other  
21 than the fact of a prior conviction, shall be determined pursuant to  
22 the provisions of RCW 9.94A.537.

23 Whenever a sentence outside the standard sentence range is imposed,  
24 the court shall set forth the reasons for its decision in written  
25 findings of fact and conclusions of law. A sentence outside the  
26 standard sentence range shall be a determinate sentence.

27 If the sentencing court finds that an exceptional sentence outside  
28 the standard sentence range should be imposed, the sentence is subject  
29 to review only as provided for in RCW 9.94A.585(4).

30 A departure from the standards in RCW 9.94A.589 (1) and (2)  
31 governing whether sentences are to be served consecutively or  
32 concurrently is an exceptional sentence subject to the limitations in  
33 this section, and may be appealed by the offender or the state as set  
34 forth in RCW 9.94A.585 (2) through (6).

35 (1) Mitigating Circumstances - Court to Consider

36 The court may impose an exceptional sentence below the standard

# WASHINGTON STATE ATTORNEY GENERAL

**April 23, 2014 - 4:55 PM**

## Transmittal Letter

Document Uploaded: 453274-Appellant's Brief.pdf

Case Name: James D. Watkins v. State Department of Licensing

Court of Appeals Case Number: 45327-4

**Is this a Personal Restraint Petition?** Yes ☐ No

### The document being Filed is:

Designation of Clerk's Papers

Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_\_

Answer/Reply to Motion: \_\_\_\_\_

☒ Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

### Comments:

Proof of Service and Appendix A are attached

Sender Name: Bibi S Shairulla - Email: [BibiS@atg.wa.gov](mailto:BibiS@atg.wa.gov)

A copy of this document has been emailed to the following addresses:

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